

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-CR-28

ASHTON HOWARD,

Defendant.

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**UNITED STATES' MOTION FOR EXTENTION OF TIME TO RESPOND TO THE  
DEFENDANT'S OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATIONS**

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The United States of America, by and through its attorneys, Richard G. Frohling, Acting United States Attorney, and Benjamin Proctor, Assistant United States Attorney, hereby moves the Court for an extension of time to file its response to the defendant's Objections to the Magistrate Judge's Report and Recommendations. Docs. #42.

On January 26, 2021, the defendant was charged by indictment with violating 18 U.S.C. §§ 231(a)(3) (Count One) and 922(g)(1) (Count Two). Doc. #12. On April 9, 2021, the defendant filed a motion to dismiss Count One, arguing that (1) 18 U.S.C. § 231(a)(3) is unconstitutional for a variety of reasons, and (2) the language of Count One fails to adequately inform him of the nature of the charge. Doc. #27.

On June 3, 2021, the magistrate judge issued a Report and Recommendation that this Court (1) grant Howard's motion to dismiss Count One based on

insufficient pleading, and (2) deny Howard's motion on all other grounds. Doc. #35. Shortly thereafter, on June 8, 2021, the grand jury returned a superseding indictment that added information to Count One. Doc. #36. This remedied the magistrate judge's concern that Count One, as set forth in the original indictment, did not sufficiently notify Howard of the nature of the crime charged. On June 22, 2021, Howard appeared for arraignment on the superseding indictment. Doc. #39.

On June 17, 2021, the defense filed an unopposed motion to extend the time to file objections to the Report and Recommendation. Doc. #37. That motion was granted and the filing deadline was extended to July 2, 2021. Doc. #38. That order also stated that the government's response to any objection was "due by the end of the day on July 16, 2021 unless the government requests an extension." Doc. #38. On July 2, 2021, the defense filed another unopposed motion to extend the objection-filing deadline. Doc. #40. That motion was granted, and the filing deadline was extended to July 6, 2021. Doc. #41.

On July 10, 2021, four days after the deadline, the defendant filed his objections to the Report and Recommendation. The objections focus on the magistrate judge's analysis of the constitutionality of § 231(a)(3).

Based on the Court's order of June 18, 2021, Doc. #38, the government's response to the defendant's objections is currently due in four days—on July 16, 2021. If the Court accepts the defendant's late objections, the government respectfully requests that it be granted the customary two weeks (until July 26, 2021) to respond to the objections. *See* General Local Rule 72(c)(2).

Dated at Milwaukee, Wisconsin, this 12th day of July, 2021.

Respectfully submitted,

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United States Attorney

By: s/Benjamin Proctor

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